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DEC 18 2008

In re Application of	:	
Richard L. Veech	:	
Application No. 09/843,694	:	DECISION ON PETITIONS
Filed: April 30, 2001	:	UNDER 37 CFR 1.137(b) AND
Attorney Docket No. 604-591	:	37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.137(b), filed November 26, 2008, to revive the above-identified application. This is also a decision on the petition under 37 CFR 1.78(a)(6), filed November 26, 2008, to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of the prior-filed provisional Application No. 60/040,858 set forth in the Supplemental Application Data Sheet (ADS) filed December 15, 2008.

Petition Under 37 CFR 1.137(b)

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed November 26, 2001, which set a shortened statutory period for reply of three (3) months. Petitioner obtained an extension of time for response within the third month under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 27, 2001. A Notice of Abandonment was mailed on July 3, 2002.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has submitted (1) the required reply under 37 CFR 1.137(c) in the form of a continuing application (i.e. Application No. 10/153,873); (2) the petition fee; and (3) a proper statement of unintentional delay. Accordingly, the petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being revived solely for purposes of accepting an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of prior-filed provisional Application No. 60/040,858.

Petition Under 37 CFR 1.78(a)(6)

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The Office notes that intermediate application, PCT/US98/05072, was filed on March 17, 1998, within twelve months of the filing date of prior-filed provisional Application No. 60/040,858, filed March 17, 1997, for which priority is claimed. A reference to the prior-filed provisional application has been included in the Supplemental ADS filed December 15, 2008. Accordingly, the petition under 37 CFR 1.78(a)(6) is **GRANTED**.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

The current surcharge set forth in 37 CFR 1.17(t) for acceptance of an unintentionally delayed claim for priority is \$1,410.00; however, petitioner paid a fee of \$130.00. The Office will charge the Deposit Account for the balance due of \$1,280.00, as authorized.

The application is being forwarded to Technology Center AU 1614 for consideration by the examiner of the claim under 35 U.S.C. 119(e) for the benefit of priority to the prior-filed provisional application.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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Office of Petitions

ATTACHMENT: Corrected Filing Receipt